



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Release Number: **200832038**

Release Date: 8/8/08

Date: April 1, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL Number: 501.03-30

M = Applicant Organization

N = Officer

O = Related Company

x = State

y = Date

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

**Issues:**

*Under the following circumstances and considering the relationship with a foreign consulting company does the applicant organization's student exchange program qualify for exemption from Federal income under section 501(c)(3) of the Internal Revenue Code of 1954?*

**Facts:**

M was incorporated as a non for profit pursuant to the statutes of the State of x on y. The purpose for which this corporation was organized is to promote and enhance understanding, cultural awareness, and friendly relations between the people of the United States, Latin America and Europe through educational exchanges.

To achieve its purpose, M conducts an "Educational Exchange" activity. The exchange program involves making arrangements for an American family to temporarily exchange one of its children for a child from a family that resides in a foreign country. The exchange program is for a period of 4 to 8 weeks in the summer. The organization selects and matches qualified families and then arranges for the exchange. The children pay an amount as a fee to the

organization for finding them American families that will host them and the fee will be used for the child's transportation to and from the respective countries. The president of the organization, N, in charge of this activity. M will distribute 90% of its time and resources towards the "Educational Exchange" activity.

A copy of the organization's promotional advertising and solicitation material was requested to help explain the program. The material submitted was a brochure that described the organization as a company founded in \_\_\_\_\_ by the name of O. The brochure described O as a company located in \_\_\_\_\_ that develops and manages foreign language instruction for students. The brochure also describes a summer program that includes organizing the accommodation for students with English host families. There is also a full academic year in the USA offered where "O organizes accommodations for students in local host families that have been carefully selected to ensure a comfortable stay in a friendly environment."

The applicant's President, N, subsequently explained that O is a company founded in \_\_\_\_\_ "that provides languages services to Spanish Companies and its employees to better understand other countries cultures." "It also organizes summer exchange programs for Spanish high school students to the United Kingdom for those kids that want to learn a foreign language and experience living in another culture with host families....N is the 95% owner of O."

A copy of the O organizing document was also submitted. The English translated document is referred to as a Deed of Incorporation. The company was registered in \_\_\_\_\_ on December 12, \_\_\_\_\_ as a public limited company. The company is governed, ruled, represented and managed by the shareholders. O's Bylaws explain in Article II, Section 8 the Rights of the Shareholder as follows: "The owner or bare owner of a share shall have the nature of shareholder and, in particular, he shall have the rights of information, participation in the Corporate Bodies, contest decisions of the Meeting, according to Section 67 and following ones of the Public Limited Companies Act, the right to demand explanations from the Directors, right to profit, to the liquidation quota, preemptive right, transfer of shares, constitution of real property rights on the shares and any other rights that may base on the laws or present bylaws, except for that provided by law in case of usufruct."

#### **Law:**

Section 501(c)(3) of the Internal Revenue Code of 1986 provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes and educational purposes, no part of the net earnings which inures to the benefit of any private shareholder.

Income Tax Regulation 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Income Tax Regulation 1.501(1)-1(c) provides that the words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the

requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

#### **Application of Tax Law:**

M was formed to conduct a summer exchange program for students. The applicant makes arrangements for an American family to temporarily exchange one of its children for a child from a family that resides in a foreign country. The applicant organization selects and matches qualified families and then arranges for the exchange. The children pay an amount as a fee to the organization for finding them an American family that will host them and the fee will be used for the child's transportation to and from the respective countries.

N is the president of the organization and is in charge of the exchange program. Therefore, N is defined as an individual having a personal and private interest in the activities of the applicant organization. N is also 95% owner of the consultant company O.

The promotional materials submitted by N to further explain the applicant's activities was a brochure advertising the services of O. This demonstrated that M is performing an activity that is part of the services offered by N's consulting company. Furthering the programs of a consulting company is a single non-exempt purpose. In addition, the exchange program represents 90% of the applicant's time and resources.

The existence of this substantial nonexempt purpose precludes the M from qualifying as an exempt organization under section 501(c)(3). Furthering the programs of N's consulting company also violates the inurement provisions of IRC §501(c)(3).

#### **Applicant's Position:**

N explained that he is not compensated by O and has never been compensated for his management time and dedication to the Company. He also explained that he has never received any dividends from the Company as a shareholder since the Company was created in

#### **Conclusion:**

N's claim that he has never been compensated for his services or received a dividend as a shareholder from O does not change the fact that M is furthering the programs of his related consulting company. As a shareholder, N has the right to receive profits from his company O. Since the applicant is providing services that benefit the clients of N's consulting company this is furthering the consulting companies business interests. Furthering the business interests of a



consulting business is a non exempt purpose that also benefits the applicant's president who is a majority shareholder in the consulting company.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

**Mail to:**

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

**Deliver to:**

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date:

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:  
1120

Tax Years:  
Beginning with

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter